

1. to Mr. Snipe

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
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Order terminating appeal
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UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
January 3, 2003

No. 01-1356

DEAN E. BERGSTRESSER, Appellant

vs.

ROBERT SHANNON, et al
(Middle District of PA (Harrisburg) 00-cv-01713) (JAS)

PRESENT: Chief Judge Becker, Scirica and McKee, Circuit Judge

1. Stipulation by the Parties for Summary Disposition.

Case was CALENDARED for 12/19/02 but
oral argument was cancelled.

LaToya Corpew LaToya Corpew 267-299-4915
Case Manager

O R D E R

The foregoing stipulation is affirmed.

MARY E. D'ANDREA, CLERK
FILED
HARRISBURG, PA
JAN 7 2003
Per *MARY E. D'ANDREA, CLERK*
Deputy Clerk

A TRUE COPY:

Debra S. Johnson
ACTING CLERK

Dated: JAN 07 2003

luc/joe: PC

JEL

By the Court,

John R. Becker
Circuit Judge

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUITNo. 01-1356

Bergstresser v. Shannon, et al.

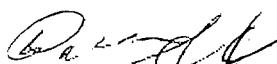
(MDPA (Harrisburg) No. 00-cv-01713 (JAS))

FILED
HARRISBURG, PA
JAN 7 2003
MARY E. D'ANDREA, CLERK
Per _____
Deputy Clerk

O R D E R

Per the direction of the Court and upon review of the parties' stipulation for summary disposition, it is hereby O R D E R E D that the matter is remanded to the District Court with direction to enter an absolute writ of habeas corpus as to the count charging aggravated assault and releasing petitioner Dean E. Bergstresser from respondents' custody entirely on that count. It is further O R D E R E D that the District Court is directed to enter a conditional writ of habeas corpus on the balance of the charges and releasing petitioner from respondents' custody unless petitioner is resentenced on those counts by the Court of Common Pleas on or before January 14, 2003, in accordance with the agreement of the parties. The Clerk shall issue the a certified copy of the Court's order and the Clerk's order in lieu of the mandate forthwith.

A TRUE COPY:



ACTING CLERK

For the Court,



Clerk

Dated: January 8, 2003

LWC/cc: Peter Goldberger, Esq.
Jeffrey E. Leber, Esq.

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

U.S.C.A. 3rd. Cir.

DEAN E. BERGSTRESSER, :
Petitioner-Appellant, : Docket No. 01-1356

v. : (M.D.Pa. No. 00-CV-1713
ROBERT SHANNON, Superintendent, :
etc., et al., : (Smyser, U.S.M.J.)
Respondents. :

STIPULATION FOR SUMMARY DISPOSITION

Pursuant to LAR 27.4 and IOP 10.6, the parties, by their undersigned counsel, jointly move and stipulate for a summary disposition of this appeal. In support, the parties state:

1. This proceeding is an appeal from the denial of an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On February 12, 2002, a motions panel of this Court (Scirica, J., with Ambro & Stapleton, JJ.) granted a certificate of appealability with respect to three specified issues. This Court has jurisdiction under 28 U.S.C. §§ 1291 and 2253.

2. The appeal has been fully briefed and was specially listed for argument on the afternoon of Thursday, December 19, 2002, before a panel comprising Chief Judge Becker and Circuit Judges Scirica and McKee.

3. During the ten days preceding the scheduled oral argument date, the parties have discussed the terms of a possible settlement of the appeal and of the underlying criminal case in state court.

4. Upon careful consideration of all the circumstances of the case, and taking into account the best interests of all

parties, undersigned counsel suggest that it would be in the interest of justice for the Court to enter an order:

a. Granting (or directing the district court to enter) an absolute writ of habeas corpus as to the count charging aggravated assault, releasing the petitioner from the respondents' custody entirely on that count; and

b. Granting (or directing the district court to enter) a conditional writ of habeas corpus on the balance of the charges, releasing the petitioner from respondents' custody unless he is resentenced on those counts by the Court of Common Pleas on or before January 14, 2003, in accordance with the agreement of the parties.

c. Directing the Clerk to issue the mandate forthwith.

5. It is the understanding of the parties that the effect of an order granting an absolute writ of habeas corpus as to the charge of aggravated assault in this case will be to require the Court of Common Pleas of Potter County to vacate appellant Bergstresser's conviction on Count 2 of the information (No. 67 of 1996) and to dismiss that count. It is the further understanding of the parties that the effect of an order granting a writ of habeas corpus as to the remaining counts, conditioned on resentencing, will be that the guilty verdicts of the jury will stand on those counts (Nos. 1 [involuntary manslaughter], 3, 4, 5 and 6), as will the finding of guilty on Count 7 (limitation on backing); however, the Court of Common Pleas will be required to resentence appellant Bergstresser on those counts. Under the parties' agreement, the Court of Common Pleas will

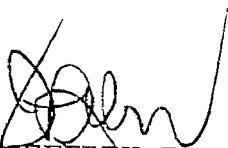
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resentence Mr. Bergstresser on Count 8 (Homicide by Vehicle While Driving Under the Influence) to the time he has served as of January 14, 2003 (to wit, three to six years' imprisonment), to be followed by two years' probation, with no sentence on the remaining counts of conviction by reason of the doctrine of merger. All court costs, fines and restitution are to remain as imposed on February 5, 1997.

6. This Court has authority to enter the requested order under both 28 U.S.C. § 2106 and 28 U.S.C. § 2243.

WHEREFORE, the appellant and the appellees jointly pray that this Court, in the interest of justice, enter an order for summary disposition of this appeal in accordance with the agreement of the parties.

Respectfully submitted,


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Attorney for Appellees

Dated: December 17, 2002


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